

Remarks

The claims were amended in accordance with the amendments above. The amendments to the claims are being made merely to clarify the invention. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

Claim Objections

In the Office Action dated 07/30/2008, claims 32-47 were objected to for depending from canceled claim 31. Accordingly, those claims that previously depended directly from claim 31 have been amended to depend from claim 1. Those claims that only depended from claim 31 indirectly did not need amendments, as they now directly depend from claims that properly depend from claim 1. Applicant therefore respectfully requests that the claim objections be withdrawn.

§112 Rejections

Claim 6 was rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. As an initial matter, Applicant notes that previously presented claim 6 was an original claim, and had not been amended as of the 07/30/2008 Office Action. As an original claim, claim 6 was self-supporting as previously presented, and therefore satisfied the written description requirement. See MPEP 2163. Nevertheless, claim 6 has been amended to further specify that the radio-opaque material is a marker material. In view of the foregoing, and further in view of paragraph [00108] of Applicant's specification, one of ordinary skill in the art would immediately recognize that the inventors had possession of the subject matter recited in amended claim 6 at the time the application was filed. Applicant therefore respectfully requests that the rejection be withdrawn.

Claims 1-9, 11-24, 27-28, and 32-47 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Office noted the phrase "provide the biological product or function" previously recited in claim 1. That phrase has been

deleted from claim 1, thereby rendering the rejection moot. Applicant therefore respectfully requests that the rejection be withdrawn.

Claim 21 was rejected under 35 U.S.C. §112 for lacking sufficient antecedent basis for the limitation “the anti-inflammatory agent.” Applicant appreciates the Office’s suggestion that claim 21 should depend from claim 19, and has adopted the suggestion by amending claim 21 to depend from claim 19. Applicant therefore respectfully requests that the rejection be withdrawn.

#### §102 Rejections

Claims 1-7, 11, 12, 19-21, 24, 27, 28, and 32-47 were rejected under 35 U.S.C. §102(b) as being unpatentable over Dionne et al. (US Patent No. 5,798,113). Under MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. In addition, the elements in the prior art reference must be arranged as required by the claim. MPEP 2131 (emphasis added).

Applicant submits that Dionne et al. fails to teach or suggest all of the limitations recited in amended independent claim 1, particularly in the arrangement recited in the claim. For instance, amended independent claim 1 recites a tether that is both coupled with the biomaterial and that “comprises a tube configured to replenish the core.” Dionne et al. fails to teach or suggest such limitations, among others, particularly in the arrangement recited claim 1. Indeed, to the extent that Dionne et al. teaches a tether at all, Dionne et al. fails to teach or suggest such a tether comprising a tube that is configured to replenish the core of the biomaterial. Accordingly, Dionne et al. fails to anticipate claim 1 in accordance with MPEP 2131. Applicant therefore respectfully requests that the rejection be withdrawn.

Applicant further notes that the dependent claims include additional limitations not taught or suggested in the art of record, thus forming independent basis for novelty.

#### Conclusion

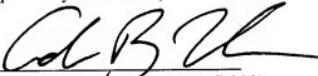
While several distinctions have been noted over the art of record, Applicant notes that there are several other limitations recited in the present claims which are neither taught nor

suggested by the art of record. Applicant expressly reserves all rights and arguments with respect to distinctions not explicitly noted herein. In addition, to the extent that the amendments constitute a narrowing of the claims, such narrowing of the claims should not be construed as an admission as to the merits of the prior rejections. Indeed, Applicant traverses the rejections and preserves all rights and arguments. To the extent that any particular statement or argument by the Office in the pending Office Action has not been explicitly addressed herein, the same should not be construed as an acquiescence or admission by the Applicant that such statements or arguments by the Office are accurate or proper.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance. Should the Examiner wish to discuss the amendments or arguments made herein, Applicant invites the Examiner to contact the undersigned at (513) 369-4811 or via e-mail at [aulmer@fbtlaw.com](mailto:aulmer@fbtlaw.com).

The Commissioner for Patents is hereby authorized to charge any deficiency or credit any overpayment of fees to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully Submitted,

  
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